



April 16, 2002

Ms. Sylvia F. Hardman  
Deputy Commissioner for Legal Services  
Texas Rehabilitation Commission  
4900 North Lamar Boulevard  
Austin, Texas 78751-2399

OR2002-1883

Dear Ms. Hardman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161517.

The Texas Rehabilitation Commission (the "commission") received three requests for copies of two sets of interview questions and preferred answers and the corresponding interview matrices for two specified job postings. You claim that the requested information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have failed to submit to this office the requested interview matrices or rating sheets for review. To the extent that this information exists, it must be released to the requestors at this time. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).

In regard to the submitted information, section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). See Open Records Decision No. 626 at 8 (1994).

You contend that the submitted interview questions are excepted from disclosure under section 552.122(b) of the Government Code. You state that the “questions are designed to test the knowledge, skills, and abilities of the candidates and are often re-used for subsequent postings for the same position.” You further state that the expected responses are “designed to ensure uniformity in scoring the respective answers of each candidate.” Having considered your arguments, we agree that Unit 19 interview questions 2 through 5, 7, 8, 10, 11, 13, 14, 16, and 17 constitute “test items” as contemplated by section 552.122(b). We also find that the answers to these questions may reveal the questions themselves. Accordingly, the commission may withhold Unit 19 questions 2 through 5, 7, 8, 10, 11, 13, 14, 16, and 17 and their respective preferred answers, pursuant to section 552.122(b) of the Government Code. However, you have not demonstrated that Unit 19 interview questions 1, 6, 9, 12, and 15, along with their preferred answers, satisfy the section 552.122 criteria. Therefore, these questions and answers must be released.

In regard to the interview questions and responses of Unit 35, we agree that interview questions 1 through 3, 5, 6, 8, 9, 11, and 12 constitute “test items” as contemplated by section 552.122(b). We also find that the answers to these questions may reveal the questions themselves. Accordingly, the commission may withhold Unit 35 questions 1 through 3, 5, 6, 8, 9, 11, and 12 and their respective preferred answers, pursuant to section 552.122(b) of the Government Code. However, you have not demonstrated that Unit 35 interview questions 4, 7, and 10, along with their preferred answers, satisfy the section 552.122 criteria. Therefore, these questions and answers must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 161517

Enc: Submitted documents

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